Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Alain Gosselin,

applicant,

and

Seafarers' International Union of Canada,

respondent,

and

Desgagnés Marine Cargo Inc.,

employer.

Board File: 30269-C
Neutral Citation: 2014 CIRB 717
March 10, 2014

The Canada Industrial Relations Board (the Board) was composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. William G. McMurray and Graham J. Clarke, Vice-Chairpersons.

Parties' Representatives of Record

Mr. Christian Gosselin, for Mr. Alain Gosselin;

Mr. Gary H. Waxman, for the Seafarers' International Union of Canada;

Mr. Michel Denis, CPA, CA, for Desgagnés Marine Cargo Inc.

These reasons for decision were written by Mr. Graham J. Clarke.

[1] Section 16.1 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this application without an oral hearing.

I. Nature of the Application

[2] On December 24, 2013, the Board received an application for reconsideration of its decision in *Gosselin*, 2013 CIRB 704 (*Gosselin 704*).

[3] In his application, Mr. Gosselin is seeking, among other things, reconsideration by the Board of the facts put before the original panel and a different conclusion concerning his alleged status of employee at Desgagnés Marine Cargo Inc. (DMC).

[4] The Board dismisses the application for the reasons that follow.

II. Analysis and Decision

[5] In *Gosselin 704*, the Board found that Mr. Gosselin did not have the status of employee at DMC, an essential requirement for a complaint alleging violation of section 37 of the *Code*:

> 37. A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith **in the representation of any of the employees in the unit** with respect to their rights under the collective agreement that is applicable to them.
>
> (emphasis added)

[6] Upon considering the contradictory allegations of the parties in this regard, the original panel determined that DMC did not hire Mr. Gosselin:

> [21] **At the time DMC refused to hire him, the complainant did not have the status of employee within the meaning of the collective agreement. Rather, his status was that of an applicant proposed to the employer by the union to fill a position on a vessel.**
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> ...
>
> [24] **However, the evidence in this matter reveals that the complainant was not an employee who was a member of the bargaining unit in question.** The complainant was not employed by DMC at the time of the events at issue here. In fact, according to DMC, the complainant did not work for it in

2013 and his last period of employment with the corporation dates back to 2005. Additionally, DMC had already refused to hire the complainant in the past, in 2009.

...

[26] The complainant was not employed by DMC and therefore was not an employee who was a member of the bargaining unit with rights under the collective agreement within the meaning of section 37 of the *Code*.

(emphasis added)

[7] Following amendments to the *Canada Industrial Relations Board Regulations, 2012*, the Board, in *Buckmire*, 2013 CIRB 700 (*Buckmire 700*), reiterated the fundamental principles underlying its reconsideration power under section 18 of the *Code*. An applicant must show that there are grounds for reconsideration, as explained in *Buckmire 700*:

[47] The reconsideration process as described earlier is exceptional. In normal circumstances, the Board hears a case once and, as the privative clause in section 22 of the *Code* illustrates, its decision is final.

[48] Unless a properly pleaded application for reconsideration raises a strong argument, a reconsideration panel will generally summarily dismiss it. To do otherwise increases the expense of these cases for all parties and undermines the key principle of finality.

[49] Lengthy reconsideration decisions which simply dismiss an application could promote the incorrect impression that the Board decides its cases twice.

[8] In *Kies*, 2008 CIRB 413, the Board referred to its traditional position to the effect that the reconsideration process is never an opportunity for a party to reargue the original case:

[13] In *Canada Post Corporation* (1988), 75 di 80 (CLRB no. 710), **the Board confirmed the need for a party to plead its entire case before the original panel**:

> The Board encourages parties to put their whole case before the Board in initial applications by applying strict rules for reconsideration applications. Parties seeking reconsideration of Board decisions are required to show cause why additional information sought to be added was not placed before the Board in the initial proceedings. **Cases where parties are found to be merely seeking a different decision based on the same factual considerations are usually dismissed by the Board without proceeding to a public hearing. ...**
>
> (page 87)

...

> [18] An allegation of an error of law is limited to those legal arguments put before the original panel. Just as a party cannot usually raise facts it failed to plead originally, a party cannot, on reconsideration, raise new legal arguments it could have put to the original panel (see *Bell Canada* (1979), 30 di 112; and [1979] 2 Can LRBR 435 (CLRB no. 192)). The Board may be more flexible on this issue when faced with questions of its constitutional jurisdiction over the parties.
>
> (emphasis added)

[9] In his application for reconsideration, Mr. Gosselin disputes the determination of the original panel that he was not an employee at DMC. He also puts forth new legal arguments that could have been put before the original panel.

[10] The role of a reconsideration panel is not to sit in appeal of the facts as determined by the original panel, nor is it to consider additional legal arguments that could have been put before the original panel.

[11] In his application, Mr. Gosselin does not provide sufficient grounds to persuade the Board to reconsider its decision in *Gosselin 704*. Accordingly, the application is dismissed.

[12] This is a unanimous decision.

Translation

Elizabeth MacPherson
Chairperson

William G. McMurray
Vice-Chairperson

Graham J. Clarke
Vice-Chairperson